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BEFORE THE

# Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

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In the Matter of  
Billed Party Preference  
for 0+ InterLATA Calls

)  
) CC Docket No. 92-77  
) Phase I  
)

## SUPPLEMENTAL REPLY COMMENTS OF CAPITAL NETWORK SYSTEM, INC.

Capital Network System, Inc. ("CNS"), by its undersigned attorneys, hereby submits its supplemental reply comments in support of the proposal contained in the Report and Order and Request for Supplemental Comment issued in the above-captioned proceeding <sup>1/</sup> to mandate compensation for operator service providers ("OSPs") who continue to receive "0+" access calls from cardholders of American Telephone and Telegraph Company's ("AT&T") proprietary Card Issuer Identifier ("CIID") cards.

### I. OSP COMPENSATION FOR TRANSFER SERVICES SHOULD BE MANDATORY

1. The record in this proceeding demonstrates that the Commission should immediately require AT&T to compensate OSPs for whatever type of transfer services they choose to provide to AT&T, whether the services involve informational transfers through advising cardholders orally how to access AT&T or

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<sup>1/</sup> Billed Party Preference for 0+ InterLATA Calls, FCC 92-465, CC Docket No. 92-77, Phase I (released November 6, 1992) ("Request").

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physical transfers through rerouting of the calls.<sup>2/</sup> Among the OSPs, the victims of AT&T's anticompetitive behavior, only Sprint Corporation ("Sprint") opposes a program of mandatory compensation.<sup>3/</sup>

2. Sprint's opposition to mandatory compensation appears to be based on the unrealistic fear that, in order to tap a new source of revenue, OSPs may start placing signage on or near public telephones advising consumers to dial "0+" for all calls.<sup>4/</sup> Sprint's fear is totally misplaced given the OSPs' lack of market power. If an OSP makes access difficult for a hotel owner's guests or restaurateur's patrons, the guests or patrons will complain about the service and the OSP will be replaced. Not only do OSPs lack the market power of an AT&T that would be necessary to succeed with this type of strategy, but such behavior is, in any event, prohibited by the Telephone Operator Consumer Services Improvement Act of 1990.<sup>5/</sup>

3. In arguing against compensation, Sprint expresses concern over "the behavior that has occurred among many operator

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<sup>2/</sup> For a description of the two general types of informational transfers and the two general types of physical transfers provided by OSPs, see Supplemental Comments of CNS at 5-8. See also Supplemental Comments of the Competitive Telecommunications Association ("CompTel") at 10-14.

<sup>3/</sup> Supplemental Comments of Sprint Corporation at 1.

<sup>4/</sup> Id. at 4.

<sup>5/</sup> 47 U.S.C. § 226(b)(1)(D), (c)(1) (requiring OSPs to ensure that aggregators provide consumers with access to their preferred interstate common carrier through "800" and "950" access codes).

service providers in the past." <sup>6/</sup> Given AT&T's own deceptive CIID card marketing practices that caused such "widespread consumer confusion and dissatisfaction" that the FCC formally admonished AT&T for its behavior and warned that similar behavior in the future could lead to forfeiture proceedings, <sup>7/</sup> it appears that Sprint's concern is wrongly placed. It is AT&T's behavior, not the OSPs, that has created the situation necessitating the payment of compensation.

**II. THE COMMISSION MUST REJECT ALL ATTEMPTS TO NARROW THE SCOPE OF COMPENSABLE TRANSFERS**

4. The FCC should require that compensation be paid to OSPs for all transfer services that are technologically feasible. Arguments about the additional expense or capital investment required with certain types of transfers <sup>8/</sup> should be viewed as merely a pretext for delaying the entire compensation process. Instead, the FCC must order compensation for all transfer services that can be provided with current technology and equipment. The definition of compensable services should be broadly defined and technologically neutral. <sup>9/</sup> Should

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<sup>6/</sup> Sprint Supplemental Comments at 4.

<sup>7/</sup> Letter from Donna R. Searcy, Secretary, FCC, to Robert E. Allen, Chairman, AT&T, of November 3, 1992, at 3-4. The Commission found, inter alia, that AT&T's "unequivocal directive to 'destroy' existing [calling] cards was overly broad and unqualified" and that it "may have persuaded many consumers to unnecessarily destroy or discard otherwise valid calling cards[.]" Id. at 3.

<sup>8/</sup> See, e.g., AT&T Supplemental Comments at 4.

<sup>9/</sup> Comments of Intellicall, Inc. at 7.

additional transfer methods become possible in the future, the FCC should require that compensation be paid for these methods as well.

5. While apparently willing to pay compensation, AT&T seeks to limit compensation to instances where OSPs advise cardholders to "hang up and dial the access code(s) provided on the customer's card." <sup>10/</sup> AT&T's reasons for restricting compensation to informational transfers are factually erroneous or irrelevant and should be rejected.

6. AT&T criticizes physical transfer services as inefficient and not universally available. <sup>11/</sup> As a threshold matter, these arguments are mere smoke screens for AT&T's desire to continue to gain competitive advantage from its CIID cards at the expense of its competitors because it believes that paid advertising in the form of informational transfers would be more beneficial to it than physical transfers. If AT&T were truly concerned about efficiency and "universal availability", then it would have developed exclusively proprietary access methods for its CIID cards from the outset. <sup>12/</sup> Likewise, AT&T's recent staunch (and successful) opposition to the FCC's "0+ public domain" proposal based on its refusal to convert access to CIID

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<sup>10/</sup> AT&T Supplemental Comments at 6.

<sup>11/</sup> Id. at 2-3.

<sup>12/</sup> Indeed, the only proprietary access method that AT&T offered of its own accord, 10XXX access, is still not universally available. Having chosen access methods that it knew were not universally available, AT&T cannot now complain that the solutions to its access problem are not universally available.

cards to exclusively proprietary methods undermines the credibility of its new found concern for cardholder efficiency and universal access. Because AT&T has created "an immediate competitive problem" that results in "a loss of customer good will for the OSP[s]," <sup>13/</sup> the FCC should permit OSPs to select the type of transfer arrangements that they believe will best restore lost customer good will.

7. AT&T contends that transfer services are inefficient by asserting that physical transfers could "impair the quality of service" provided to callers because they may have to provide the called number and/or card number twice. <sup>14/</sup> This argument overlooks the fact that even with informational transfer services, callers will have to provide this same information twice -- once to the presubscribed carrier and once to their preferred carrier. <sup>15/</sup> Moreover, informational transfers may in fact require callers to dial more digits than with physical transfers because of the caller's need to dial an access code in addition to redialing the telephone number and reentering the CIID card number. <sup>16/</sup> Thus, with no discernable difference in

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<sup>13/</sup> Request at para. 25.

<sup>14/</sup> AT&T Supplemental Comments at 3.

<sup>15/</sup> Even if OSPs are able to program their switches to identify CIID cards after a caller enters the first few digits of his or her account number, that caller would still have to dial the entire called number.

<sup>16/</sup> Several parties suggest that suggest that "the Commission may also wish to consider a compensation mechanism" when OSPs transfer calls to AT&T without a CIID card number. Supplemental  
(continued...)

service quality or efficiency, <sup>17/</sup> the Commission should allow the OSP, rather than AT&T, to determine which type of transfer service to provide. As another reason to permit physical transfer, certain states require carriers to transfer callers, rather than hang up on them, when their calls cannot be completed.

8. AT&T condemns compensation for physical transfer services as "counterproductive" to AT&T's educational campaign because such compensation could encourage cardholders to disregard AT&T's education campaign. <sup>18/</sup> There are far greater challenges to the success of AT&T's campaign than whether

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<sup>16/</sup> (...continued)

Comments of Cleartel Communications, Inc., International Pacific, Inc., and Teltrust Communications Services, Inc. at 7. There is no question but that OSPs ought to be compensated for such calls. OSPs can supply AT&T with the first six digits of the originating line, the time of day, and the date of the call -- which should be more than enough information for AT&T to verify that it received the call. In any event, because AT&T has deliberately and unilaterally imposed a variety of costs on its competitors through the unwarranted receipt of CIID card calls, a compensation methodology should be prescribed by the Commission which gives OSPs the benefit of the doubt and requires AT&T to match the calls and supply the CIID card number itself to the extent it wishes to verify the OSPs' invoices.

<sup>17/</sup> As another factual argument against physical transfers, AT&T asserts that the originating OSP's network must remain in the call path for the entire duration of the conversation in all transfers except direct OSP to AT&T connections. AT&T Supplemental Comments at 3-4. This assertion is false. In the transfer method proposed by CNS in its tariff and currently provided without compensation to AT&T, CNS transfers "0+" proprietary calls to LECs for reorigination to AT&T. CNS hands off the call to the LEC at the originating location of the call and does not remain in the call path. See CNS Supplemental Comments at 7.

<sup>18/</sup> AT&T Supplemental Comments at 6.

compensation is ordered for physical transfers, for example, the availability of "0+" access to AT&T at the majority of public phones <sup>19/</sup> and the availability of "0-" access to AT&T from all public telephones. <sup>20/</sup>

9. Rather than being counterproductive, compensation for physical transfer services will provide an important competitive incentive for AT&T to succeed at its consumer education program because AT&T will have to pay compensation to the extent the program does not work. To a large extent, informational transfer services function as paid advertising for AT&T by its competitors and provide an offsetting benefit to AT&T for its expense. Physical transfer services, however, provide no such offsetting benefit. <sup>21/</sup> Thus, mandating compensation for physical transfer services will motivate AT&T to educate aggressively its cardholders to avoid these payments. As the Commission's recent experience with AT&T's 800 access number indicates, simply

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<sup>19/</sup> Comments of Southwestern Bell Telephone ("SWB") at 2.

<sup>20/</sup> See Intellicall Comments at 5 n.6.

<sup>21/</sup> Indeed, one LEC criticized CNS's proposed transfer service because it would be "cost prohibitive" to AT&T and would raise "commercial viability questions." SWB Comments at 5. Such a criticism, of course, misses the point of the services entirely. OSPs did not create the need for transfer services. Instead, AT&T's business decision to select "0+" dialing as its primary access method caused OSPs to receive and, as a practical matter, forced them to transfer to AT&T millions of CIID card calls at their own expense. Thus, the FCC-mandated compensation for these transfers should be viewed as a remedial step to recover costs unwillingly imposed on OSPs by AT&T's anticompetitive actions, not as a voluntary effort to offer a commercially viable service.

requiring AT&T to implement a program does not ensure its success. <sup>22/</sup>

10. Similarly, just as the Commission should not limit compensation for transfer services to informational transfers, it should not restrict compensation to physical transfers, as proposed by Intellicall. <sup>23/</sup> OSPs are in the best position to know which type of services would best restore the loss of good will caused by AT&T's anticompetitive behavior and which would be consistent with the technological and operational capabilities of each individual public phone location. For example, physical transfers are not now technically feasible from locations such as Bell Operating Company pay telephones. Thus, requiring such transfers would not solve the competitive problem created by AT&T because it would not provide compensation for many transfers OSPs functionally are required to provide.

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<sup>22/</sup> See Request at paras. 5, 53, 56.

<sup>23/</sup> Intellicall Comments at 8.

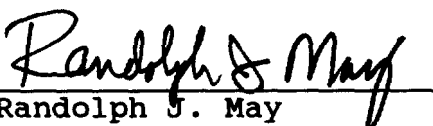


**III. CONCLUSION**

11. As shown by the record in this proceeding, the FCC promptly should order AT&T to compensate OSPs who receive "0+" proprietary card calls and then transfer the calls to AT&T.

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January 6, 1993

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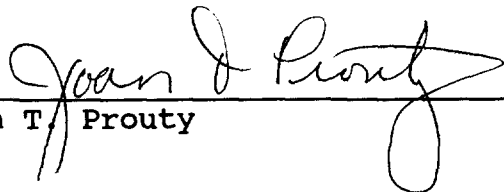
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